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OVERSEAS NAVIGATION CORP.

AUGUST 20 (legislative day, AUGUST 1), 1951.—Ordered to be printed

Mr. McCARRAN, from the Committee on the Judiciary, submitted the following

REPORT

[To accompany S. Res. 193]

The Committee on the Judiciary, to which was referred the bill (H. R. 1580) for the relief of Overseas Navigation Corp., having considered the same, reports favorably an original resolution referring the bill to the Court of Claims according to the provisions of sections 1492 and 2509 of title 28 of the United States Code.

PURPOSE

The purpose of the proposed resolution is to authorize the Court of Claims to adjudicate the questions of fact relative to the claim of the Overseas Navigation Corp.

STATEMENT

This claim was referred to the Court of Claims by Senate Resolution 338 of the Eighty-first Congress, but no action was taken thereon. H. R. 1580, having passed the House, was referred to a subcommittee of the Judiciary Committee for action thereon. The subcommittee held a hearing on H. R. 1580, and, as a result thereof, again reached the conclusion that the matter should be referred to the Court of Claims for a determination of the facts, particularly in reference to possible misrepresentation on the part of the Government employees in dealing with the sale of the *Blue Sonoco* to the Overseas Navigation Corp.

The facts relative to the above claim and the conflict therein is set forth in the letter of the Secretary of Commerce, July 11, 1950, and

the letter from the Overseas Navigation Corp., July 14, 1950, which are hereto attached and made a part of this report.

THE SECRETARY OF COMMERCE,
Washington, July 11, 1950.

Hon. EMANUEL CELLER,
Chairman, Committee on the Judiciary,
House of Representatives.

DEAR MR. CELLER: This is in response to your request of June 1, 1950, for the views of the Maritime Commission concerning H. R. 8686, a bill for the relief of the Overseas Navigation Corp.

The bill would direct the Secretary of the Treasury to pay the Overseas Navigation Corp. of New York, N. Y., the sum of $12,500 in settlement of the claim against the United States. The claim is based on the forfeiture of a deposit of $12,500 made by the corporation in connection with a bid submitted to the United States Maritime Commission for the purchase of the coastal tanker *Blue Sonoco*. The bill recites that the forfeiture followed failure of the corporation to take delivery of the vessel after "ascertaining certain facts as to the condition of the vessel not disclosed by the offer of the Commission."

The following is a summary of the facts in the case as disclosed by the files of the Maritime Commission:

The vessel *Blue Sonoco* was advertised for sale by competitive bidding under authority of sections 5 and 6 of the Merchant Marine Act, 1920, as amended, on an "as is, where is" basis without restriction as to use or nationality of the bidder but with a floor price of $50,000. The only bid received under invitation of June 7, 1946 (PD–X–185), was rejected as being unresponsive. No bids were received under a second invitation dated October 1, 1946 (PD–X–234), at the specified (bid opening time of November 13, 1946). A bid of $50,000 under date of November 21, 1946, was received from Overseas Navigation Corp. on November 22, 1946. It was in the usual form as prescribed by the invitation. The bid stated that it was in response to the invitation subject to all the terms and conditions thereof, and was accompanied by a certified check for $12,500 representing a good-faith deposit of 25 percent of the bid as required by the invitation.

The Maritime Commission December 10, 1946, approved the sale of the vessel vessel to Overseas Navigation Corp. in accordance with the bid, and telegraphic notice of award (December 12, 1946) was sent to and acknowledged (December 13, 1946) by the bidder. The bidder failed to take delivery of and pay for the vessel. Under date of February 4, 1947, the corporation requested that the parties be placed in status quo.

On February 25, 1947, the Acting Director, Large Vessels Sales Division recommended that the deposit be declared forfeit. On March 17, 1947, by action of the Managing Director, Purchase and Sales Department, acting under delegated authority, the bidder was declared to be in default and the 25 percent bid guaranty was directed to be retained as liquidated damages pursuant to section 10 of the invitation. The bidder under date of September 29, 1947, referring to a letter from the Secretary of the Commission, protested the action of forfeiture asking a review thereof by the Commission with an opportunity by the representatives of the corporation to appear before the Commission. This request was referred to the Commission under date of October 6, 1947, and noted by the Commission October 14, 1947. The Secretary of the Commission by letter of October 15, 1947, to the corporation, requested advice as to a tentative conference date of October 29, 1947. No acknowledgment appears in the files. Under date of March 30, 1948, the corporation by letter again requested the return of the good-faith deposit.

On June 3, 1948, the Commission accepted the bid for the purchase of the *Blue Sonoco* by the Foss Launch & Tug Co. for $32,596, under invitation for bids PDX–444 dated March 23, 1948.

On September 27, 1948, the general counsel approved a legal memorandum concluding that the Commission was without authority to waive the liquidated damages that accrued and vested in the Government upon the bidder's failure to take delivery. A memorandum of October 11, 1948, from the Chief, Division of Vessel Disposal, reviews the status of the matter and recommended that the Commission sustain the forfeiture action. The Commission on October 22, 1948, referred the matter to Commissioner Carson. On February 14, 1950, Commissioner Carson recommended the review of the case by the general counsel to determine whether the deposit of $12,500 might be refunded or credited against any mortgage indebtedness of the claimant. On April 3, 1950, the general counsel rendered an opinion

to the Chairman of the Commission reviewing the history of the case and the opinion previously rendered, in the light of the record and the allegations of Overseas Navigation Corp. This opinion reviewed the earlier opinion and the subsequent allegations of the bidder and concluded that there was "no basis either for refunding the deposit in question or crediting the same against any mortgage indebtedness of the bidder."

From the records in this case and the applicable law it appears that the Overseas Navigation Corp. was legally bound by contract to buy the vessel *Blue Sunoco*, that its contract was breached with liquidated damages to the United States, and that there is no power or authority to waive the forefeiture under existing law.

Whether or not there was legal discretion in the Maritime Commission to have waived the forfeiture before it was declared, it is clear that under existing law there is no authority in the Maritime Commission or its successor to give relief by way of refund or credit of the amoung of the forfeiture which was made.

Whether the Overseas Navigation Corp. should be relieved of the forfeiture is, under these circumstances, clearly a matter for congressional consideration. In this connection your attention is invited to the fact that the bid of the Overseas Navigation Corp. was the only bid under consideration at that time and, therefore, no other bids were turned down in accepting the offer.

The bill recites on page 2 in mitigation or excuse for the corporation's default in not taking delivery that this default followed "upon ascertaining certain facts as to the condition of the vessel not disclosed by the offer of the Commission." It is a matter for concern that the refund of good faith deposits is likely to have an adverse effect on procedure for the disposal of surplus property much of which has been sold on an "as is" basis or without any warranty or guarantee as to the condition or value of the property. In this case it is clear that if any of the attendant circumstances or special considerations justify relief for the corporation, the relief should not be based upon alleged representations or failures to disclose information, in a situation where there was no duty or requirement on the Commission to disclose. This appears clearly from the summary of allegations made by the corporation and comment thereon in the review made by the general counsel under date of April 3, 1950, and from the records available in the Commission. The invitation to bid was on the basis of "as is, where is, without representation or warranty of any kind but with the right of inspection by prospective bidders." The evidence in the files of the Commission's staff does not support an allegation that the claimant was informed that repair costs should not exceed $50,000. The evidence is to the contrary under a memorandum dated September 12, 1946, setting forth the recommendation of the Director, Large Vessel Sales, to the Commission, in connection with the advertisement of the vessel for sale. Article 2 of the invitation specifically excluded any representation or warranty of any kind.

In view of the fact that the invitation to bid was on the basis of "as is, where is, without representation or warranty of any kind but with the right of inspection by prospective bidders," we recommend that the words on page 2, lines 1 to 3, reading "upon ascertaining facts as to the condition of the vessel not disclosed by the offer of the Commission" be deleted as inappropriate under the circumstances.

In view of the urgency of your request we have not obtained the advice of the Bureau of the Budget with respect to this transmission.

Sincerely yours,

MATTHEW HALE,
(For the Secretary of Commerce).

OVERSEAS NAVIGATION CORP,
New York, N. Y., July 14, 1950.

Hon. JOHN W. MCCORMACK,
House Majority Leader, Washington, D. C.

MY DEAR CONGRESSMAN: May I please refer to the bill, H. R. 8686, which you introduced on behalf of the Overseas Navigation Corp., regarding the sale of a vessel known as the *Blue Sunoco*.

The facts surrounding this sale are briefly as follows:

On or about December 3, 1946, we received information from the United States Maritime Commission, Sales Division, that they were offering for sale a motor tanker *Blue Sunoco* as a seagoing, self-propelled vessel and stipulated that value of same was $50,000 and that that was the minimum bid that would be accepted. We were also advised that, inasmuch as bids were to be opened the next day, informa-

tion regarding the condition of the vessel could be obtained from the Director of Large Vessel Sales, Maritime Commission.

Upon inquiry we were advised that this vessel was in fairly good condition and that it could be repaired and put in class for approximately $35,000. Thereupon, on December 4, 1946, we forwarded to the United States Maritime Commission a check for $12,500 which they termed as a "good faith deposit." We were then notified that our bid had been accepted and we were awarded the ship.

Upon inspection of the ship, we found that the information given to us by the Sales Division of the United States Maritime Commission was entirely erroneous. Further, upon investigation, we found that the ship had formerly been operated by the United States Navy and that they had advised the United States Maritime Commission that the ship was beyond repair and should be scrapped; that the engines had stopped 57 times in 21 days on its last voyage; and that the vessel finally had to be towed to port on its last trip.

We solicited the different shipyards to ascertain what it would cost to put this vessel in class—that is, so it would pass the Coast Guard, Bureau of Ships, etc We were advised that $275,000 would be a conservative estimate and even then it was doubtful whether the engines could be replaced as the type of engine necessary was obsolete.

We subsequently found that the Sales Division of the United States Maritime Commission had this information available at all times in their files but did not divulge it to us when we made inquiries regarding the vessel. Also, we found, upon investigation, that when they accepted our check for $12,500, the bids on this particular vessel had already been opened 8 days before.

I called the above facts to the attention of the United States Maritime Commission and requested of them, in view of the foregoing facts regarding the sale of the vessel, that they return our $12,500 "good-faith deposit" as the vessel had been erroneously advertised as a self-propelled vessel and that for approximately $35,000 could be put in class.

The United States Martime Commission referred the matter to their Legal Division and, as I recall it, an opinion was rendered to the effect that the Maritime Commission had a right to claim our "good-faith deposit."

I then appealed the decision and, as I advised you, the United States Maritime Commission said they did not feel that they wanted to disturb the opinion of their Legal Division.

May I also call your attention to the fact that this vessel was advertised later and sold for scrap after our refusal to pick up our option. This compels me to believe that the United States Maritime Commission knew, when they offered the vessel for sale to us as a self-propelled vessel, that its condition did not warrant the representation made by the United States Maritime Commission. Further, if the facts which were in the possession of the United States Maritime Commission regarding the vessel had been made available to us, we certainly would not have offered to buy this vessel as it was advertised.

May I take this opportunity to thank you for your splendid cooperation in this matter, and I beg to remain,

Very respectfully yours,

OVERSEAS NAVIGATION CORP.,
WALTER J. MCCAULEY, *President.*